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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

CURT SIMPSON,

Plaintiff,

- vs -

THE WORSTER GROUP, LLC, TACO
DEL SOL, INC., and FAST TRIP, INC.,

Defendants.

CASE No.:

COMPLAINT

Plaintiff, CURT SIMPSON (hereinafter the “Plaintiff”), through undersigned counsel, hereby files this Complaint and sues THE WORSTER GROUP, LLC, a Montana Limited Liability Company, TACO DEL SOL, INC., a Montana Corporation, and FAST TRIP, INC., a Montana Corporation, (hereinafter, collectively the “Defendants”), for injunctive relief, attorney’s fees and costs (including, but not limited to, court costs and expert fees), pursuant to 42 U.S.C. §12181, et. seq., (“AMERICANS WITH DISABILITIES ACT” or “ADA”) and alleges:

JURISDICTION AND PARTIES

1
2 1. This is an action for declaratory and injunctive relief pursuant to Title
3
4 III of the Americans with Disabilities Act, 42 U.S.C. §12181, et. seq., (hereinafter
5 referred to as the “ADA”). This Court is vested with jurisdiction under 28 U.S.C.
6 §1331 and §343.

7
8 2. Venue is proper in this Court, Missoula Division pursuant to 28
9 U.S.C. §1391(B) in that all events giving rise to this lawsuit occurred in Missoula
10 County, Montana.

11
12 3. At the time of Plaintiff’s visit to Defendants’ Subject Facilities, prior
13 to instituting he instant action, CURT SIMPSON (hereinafter referred to as
14 “SIMPSON”), was a resident of the State of Montana, has an amputation of the
15 right leg and as such suffers from what constitutes a “qualified disability” under
16 the Americans with Disabilities Act of 1990, and used a wheelchair for mobility.
17 He is required to traverse with a wheelchair and is substantially limited to
18 performing one or more major life activities including, but not limited to, walking,
19 standing, grabbing, tight grasping, and/or pinching or twisting of the wrist.
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21

22
23 4. The Plaintiff personally visited, on or about November 1, 2019
24 Defendants’ Subject Facilities, but was denied full and equal access to, and full and
25 equal enjoyment of, the facilities services, goods, privileges and accommodations
26 offered within Defendants’ Subject Facilities, which is the subject of this lawsuit,
27

1 even though he would be classified as a “bona fide patron”, because of his
2 disabilities. Plaintiff lives in Ravalli County, Montana, in close proximity to
3 Defendants, (within 15 miles) and travels in the surrounding areas near
4 Defendants’ Subject Facilities on a regular basis.
5

6 5. The Defendants, THE WORSTER GROUP, LLC, TACO DEL SOL,
7 INC., and FAST TRIP, INC., are authorized to conduct and are conducting
8 business within the State of Montana.
9

10 6. Upon information and belief, TACO DEL SOL, INC., is the lessee
11 and/or operator of the real property (the “Subject Facility”), and the owner of the
12 improvements where the Subject Facility is located which is the subject of this
13 action, the establishment commonly referred to as TACO DEL SOL located at
14 2730 S Reserve Street, in Missoula, Montana.
15

16 7. Upon information and belief, FAST TRIP, INC., is the lessee and/or
17 operator of the real property (the “Subject Facility”), and the owner of the
18 improvements where the Subject Facility is located which is the subject of this
19 action, the establishment commonly referred to as FAST TRIP located at 2730 S
20 Reserve Street, in Missoula, Montana.
21

22 8. Upon information and belief, THE WORSTER GROUP, LLC, is the
23 lessor, operator and/or owner of the real property (the “Subject Facility”), and the
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1 owner of the improvements where the Subject Facilities are located which are the
2 subjects of this action.

3
4 9. All events giving rise to this lawsuit occurred in the State of Montana.
5 Venue is proper in this Court as the premises are located in Missoula County in the
6 Montana District, Missoula Division.
7

8 **COUNT I – VIOLATIONS OF THE AMERICANS WITH**
9 **DISABILITIES ACT**
10

11 10. On or about July 26, 1990, Congress enacted the Americans with
12 Disabilities Act (“ADA”), 42 U.S.C. §12101, et. seq. Commercial enterprises
13 were provided one and a half years from enactment of the statute to implement its
14 requirements. The effective date of the Title III of the ADA was January 26, 1992.
15 42 U.S.C. §12181; 20 C.F.R. §36.508(a).
16

17 11. Congress found, among other things, that:
18

- 19 (i) some 43,000,000 Americans have one or more physical
20 or mental disabilities, and this number shall increase as the
21 population continues to grow older;
- 22 (ii) historically, society has tended to isolate and segregate
23 individuals with disabilities, and, despite some
24 improvements, such forms of discrimination against
25 disabled individuals continue to be a pervasive social
26 problem, requiring serious attention;
- 27 (iii) discrimination against disabled individuals persists in
such critical areas as employment, housing, public
accommodations, transportation, communication,

1 recreation, institutionalization, health services, voting
2 and access to public services and public facilities;

3 (iv) individuals with disabilities continually suffer forms of
4 discrimination, including outright intentional exclusion,
5 the discriminatory effects of architectural, transportation,
6 and communication barriers, failure to make
7 modifications to existing facilities and practices.
8 Exclusionary qualification standards and criteria,
9 segregation, and regulation to lesser services, programs,
10 benefits, or other opportunities; and,

11 (v) the continuing existence of unfair and unnecessary
12 discrimination and prejudice denies people with
13 disabilities the opportunity to compete on an equal basis
14 and to pursue those opportunities for which our country
15 is justifiably famous, and costs the United States billions
16 of dollars in unnecessary expenses resulting from
17 dependency and non-productivity.

18 42 U.S.C. §12101(a)(1)-(3), (5) and (9).

19 12. Congress explicitly stated that the purpose of the ADA was to:

20 (i) provide a clear and comprehensive national mandate for
21 the elimination of discrimination against individuals with
22 disabilities;

23 (ii) provide clear, strong, consistent, enforceable standards
24 addressing discrimination against individuals with
25 disabilities; and,

26 (iii) invoke the sweep of congressional authority, including
27 the power to enforce the fourteenth amendment and to
regulate commerce, in order to address the major areas of
discrimination faced day-to-day by people with
disabilities.

42 U.S.C. §12101(b)(1)(2), and (4).

1 13. Pursuant to 42 U.S.C. §12181(7) and 28 C.F.R. §36.104, Defendants
2 are places of public accommodation in that they are establishments which provide
3 goods and services to the public.
4

5 14. Pursuant to 42 U.S.C. §12181(7) and 28 C.F.R. §36.104, the building
6 and/or Subject Facility which is the subject of this action is a public
7 accommodation covered by the ADA and which must be in compliance therewith.
8

9 15. The Plaintiff is informed and believes, and therefore alleges, that the
10 Subject Facility has begun operations and/or undergone remodeling, repairs and/or
11 alterations since January 26, 1990.
12

13 16. Defendants have discriminated, and continue to discriminate, against
14 the Plaintiff, and others who are similarly situated, by denying full and equal
15 access to, and full and equal enjoyment of, goods, services, facilities, privileges,
16 advantages and/or accommodations at Defendants' Subject Facilities in derogation
17 of 42 U.S.C. §12101, et. seq., and as prohibited by 42 U.S.C. §12182 et. seq., and
18 by failing to remove architectural barriers pursuant to 42 U.S.C.
19 §12182(b)(2)(a)(iv), where such removal is readily achievable.
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21
22

23 17. The Plaintiff has been unable to, and continues to be unable to, enjoy
24 full and equal safe access to, and the benefits of, all accommodations and services
25 offered at Defendants' Subject Facilities. Prior to the filing of this lawsuit, the
26 Plaintiff visited the subject properties and was denied full and safe access to all the
27

1 benefits, accommodations and services of the Defendants. Prior to the filing of this
2 lawsuit, SIMPSON, personally visited TACO DEL SOL, and FAST TRIP located
3 at 2730 S. Reserve Street, located in Missoula, Montana with the intention of using
4 Defendants' facilities, but was denied full and safe access to the facilities, and
5 therefore suffered an injury in fact that is traceable to the Facilities actions. As
6 stated herein, the Plaintiff has visited the Subject Facilities in the past, prior to the
7 filing of this lawsuit, resides near said Subject Facility, and Plaintiff intends to
8 return to the Subject Facility and Property within six months, or sooner, upon the
9 Subject Facility being made accessible but is currently deterred from returning due
10 to these barriers. As such, Plaintiff is likely to be subjected to encountering
11 continuing discrimination at the Subject Facility unless it is made readily
12 accessible to and usable by individuals with disabilities to the extent required
13 under the ADA, including the removal of the architectural barrier which remain at
14 the Subject Facility. The injury in fact can be redressed by a favorable decision by
15 this Court.

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22 17. Pursuant to the mandates of 42 U.S.C. §12134(a), on July 26, 1991,
23 the Department of Justice, Office of the Attorney General, promulgated Federal
24 Regulations to implement the requirements of the ADA, known as the Americans
25 with Disabilities Act Accessibility Guidelines (hereinafter "ADAAG"), 28 C.F.R.
26
27

1 Part 36, under which said Department may obtain civil penalties of up to \$110,000
2 for the first violation and \$150,000 for any subsequent violation.

3
4 18. The Defendants' Subject Facilities are in violation of 42 U.S.C.
5 §12182 et. seq., the ADA and 28 C.F.R. §36.302 et. seq., and is discriminating
6 against the Plaintiff, as a result of interalia, the following specific violations:
7

8 **VIOLATIONS**

9 a) Failure to provide ADA compliant parking stall width clearance, in
10 violation of 2010 ADAS and 2015 ABAAS Section 502.2. This barrier
11 interfered with the Plaintiff's full and equal enjoyment of the facility by
12 failing to have a compliant parking stall to allow Plaintiff wheelchair access
13 to the facility after exiting his vehicle which Plaintiff requires as Plaintiff
14 utilizes a wheelchair due to the Plaintiff's disability. Said barrier is covered
by the A.D.A. guidelines and is in nonconformity with the requirements for
such architecture.

15 b) Failure to provide ADA compliant access aisle cross slope grading, in
16 violation of 2010 ADAS and 2015 ABAAS Section 502.4. This barrier
17 failed to have a compliant wheelchair access aisle cross slope grading.
18 Plaintiff utilized a wheelchair due to the Plaintiff's disability in an attempt
19 to enter Defendant's premises from the parking lot and encountered a
20 noncompliant and/or nonexistent wheelchair access aisle cross slope
21 grading for wheelchair access. Said barrier is covered by the A.D.A.
guidelines and is in nonconformity with the requirements for such
architecture.

22 c) Failure to provide ADA compliant curb ramp slope grading, in violation
23 of 2010 ADAS and 2015 ABAAS Section 405.3. This barrier failed to have
24 a compliant wheelchair route with compliant curb ramp slope grading for a
25 wheelchair accessible route. Plaintiff utilized a wheelchair due to the
26 Plaintiff's disability in an attempt to enter Defendant's premises from the
27 parking lot and encountered a noncompliant walking surface that was not
properly sloped to comply with slope requirements for wheelchair access
that non-handicapped patrons could access without barrier. Said barrier is

1 covered by the A.D.A. guidelines and is in nonconformity with the
2 requirements for such architecture.

3 d) Failure to provide ADA compliant curb ramp top landing, in violation of
4 2010 ADAS and 2015 ABAAS Section 406.4. This barrier failed to have a
5 compliant wheelchair route with compliant curb ramp top landing for a
6 wheelchair accessible route. Plaintiff utilized a wheelchair due to the
7 Plaintiff's disability in an attempt to enter Defendant's premises from the
8 parking lot and encountered a noncompliant walking surface that did not
9 provide a compliant top landing to comply with the requirements for
10 wheelchair access that non-handicapped patrons could access without
11 barrier. Said barrier is covered by the A.D.A. guidelines and is in
12 nonconformity with the requirements for such architecture.

13 e) Failure to provide ADA compliant curb ramp top landing and flared sides
14 slope grading, in violation of 2010 ADAS and 2015 ABAAS Section 406.3
15 and 406.4. This barrier failed to have a compliant wheelchair top landing
16 and ramp flared side with appropriate slope grading. Plaintiff utilized a
17 wheelchair due to the Plaintiff's disability in an attempt to enter Defendant's
18 premises from the parking lot and encountered a noncompliant and/or
19 nonexistent wheelchair top landing and ramp flared side with a non
20 complaint slope grade for wheelchair access. Said barrier is covered by the
21 A.D.A. guidelines and is in nonconformity with the requirements for such
22 architecture.

23 f) Failure to provide ADA compliant secured floor mats throughout the
24 subject facility, in violation of 2010 ADAS and 2015 ABAAS Section
25 302.2. Plaintiff encountered non-complaint secured floor mats by which he
26 had difficulty negotiating from his wheelchair which was a barrier that non-
27 handicapped patrons did not have. Said barrier is covered by the A.D.A.
guidelines and is in nonconformity with the requirements for such
architecture.

g) Failure to provide ADA compliant curb ramp slope grading, at the
entrance/exit of the exterior dining area, in violation of 2010 ADAS and
2015 ABAAS Section 405.3. This barrier failed to have a compliant
wheelchair route with compliant curb ramp slope grading for a wheelchair
accessible route. Plaintiff utilized a wheelchair due to the Plaintiff's
disability in an attempt to enter Defendant's premises from the parking lot
to the entrance/exit of the exterior dining area and encountered a

1 noncompliant walking surface that was not properly sloped to comply with
2 slope requirements for wheelchair access that non-handicapped patrons
3 could access without barrier. Said barrier is covered by the A.D.A.
4 guidelines and is in nonconformity with the requirements for such
architecture.

5 **FAST TRIP**

6 h) Failure to provide ADA compliant secured floor mats throughout the
7 subject facility, in violation of 2010 ADAS and 2015 ABAAS Section
8 302.2. Plaintiff encountered non-complaint secured floor mats by which he
9 had difficulty negotiating from his wheelchair which was a barrier that non-
10 handicapped patrons did not have. Said barrier is covered by the A.D.A.
11 guidelines and is in nonconformity with the requirements for such
architecture.

12 i) Failure to provide ADA compliant self-serve counter dispenser height, in
13 violation of 2010 ADAS and 2015 ABAAS Section 904.4.1 and 904.4.2.
14 This barrier failed to have compliant self-serve counter dispenser height
15 accessible by wheelchair that non-handicapped patrons could access without
16 barrier. Said barrier is covered by the A.D.A. guidelines and is in
nonconformity with the requirements for such architecture.

17 j) Failure to provide ADA compliant self-serve dispensers height, in
18 violation of 2010 ADAS and 2015 ABAAS Section 308.1. This barrier
19 failed to have compliant self-serve dispensers height accessible by
20 wheelchair that non-handicapped patrons could access without barrier. Said
barrier is covered by the A.D.A. guidelines and is in nonconformity with the
requirements for such architecture.

21 k) Failure to provide ADA compliant merchandise, point of sale and
22 displays are is positioned too high in violation of 2010 ADAS and 2015
23 ABAAS Section 308.1. This barrier failed to have point of sale, merchandise
24 and display reach ranges, accessible by wheelchair that non-handicapped
25 patrons could access without barrier. Said barrier is covered by the A.D.A.
26 guidelines and is in nonconformity with the requirements for such
27 architecture.

1 l) Failure to provide ADA compliant self-serve counter dispenser height, in
2 violation of 2010 ADAS and 2015 ABAAS Section 904.4.1 and 904.4.2.
3 This barrier failed to have compliant self-serve counter dispenser height
4 accessible by wheelchair that non-handicapped patrons could access without
5 barrier. Said barrier is covered by the A.D.A. guidelines and is in
6 nonconformity with the requirements for such architecture.

7 m) Failure to provide ADA compliant self-serve dispensers height, in
8 violation of 2010 ADAS and 2015 ABAAS Section 308.1. This barrier
9 failed to have compliant self-serve dispensers height accessible by
10 wheelchair that non-handicapped patrons could access without barrier. Said
11 barrier is covered by the A.D.A. guidelines and is in nonconformity with the
12 requirements for such architecture.

13 n) Failure to provide ADA compliant circulation aisles throughout the
14 subject facility, in violation of 2010 ADAS and 2015 ABAAS Section
15 403.5.1. This barrier failed to have compliant circulation aisles accessible by
16 wheelchair. Plaintiff utilized a wheelchair due to the Plaintiff's disability in
17 an attempt to enter Defendant's premises and encountered noncompliant
18 circulation aisles for wheelchair access that non-handicapped patrons could
19 access without barrier. Said barrier is covered by the A.D.A. guidelines and
20 is in nonconformity with the requirements for such architecture.

21 o) Failure to provide ADA compliant transaction counter height, in violation
22 of 2010 ADAS and 2015 ABAAS Section 904.4.1 and 904.4.2. This barrier
23 failed to have compliant transaction counter height with wheelchair access.
24 Plaintiff utilized a wheelchair due to the Plaintiff's disability in an attempt to
25 enter Defendant's premises and encountered noncompliant transaction
26 counter height with wheelchair access that non-handicapped patrons could
27 access without barrier. Said barrier is covered by the A.D.A. guidelines and
is in nonconformity with the requirements for such architecture.

p) Failure to provide ADA compliant number of accessible table seating, in
violation of 2010 ADAS and 2015 ABAAS Section 226.1. This barrier
failed to have a compliant number of wheelchair accessible table seating.
Plaintiff utilized a wheelchair due to the Plaintiff's disability in an attempt to
enter Defendant's premises and encountered inadequate number of
accessible table seating with wheelchair access that non-handicapped
patrons could access without barrier. Said barrier is covered by the A.D.A.

1 guidelines and is in nonconformity with the requirements for such
2 architecture.

3 q) Failure to provide ADA compliant table seating clearances, in violation of
4 2010 ADAS and 2015 ABAAS Section 306.1 and 306.3.1. This barrier
5 failed to have a compliant table seating clearances for wheelchair accessible
6 table seating. Plaintiff utilized a wheelchair due to the Plaintiff's disability in
7 an attempt to patronize Defendant's premises and encountered inadequate
8 table seating clearances for wheelchair access that non-handicapped patrons
9 could access without barrier. Said barrier is covered by the A.D.A.
10 guidelines and is in nonconformity with the requirements for such
11 architecture.

12 r) Failure to provide ADA compliant table height, in violation of 2010
13 ADAS and 2015 ABAAS Section 902.2. This barrier failed to have a
14 compliant table height for wheelchair accessible table seating. Plaintiff
15 utilized a wheelchair due to the Plaintiff's disability in an attempt to
16 patronize Defendant's premises and encountered inadequate table height for
17 wheelchair access that non-handicapped patrons could access without
18 barrier. Said barrier is covered by the A.D.A. guidelines and is in
19 nonconformity with the requirements for such architecture.

20 s) Failure to provide ADA compliant directional and informational signage
21 leading to the nearest restroom, in violation of 2010 ADAS and 2015
22 ABAAS Section 216.6. This barrier failed to have compliant directional and
23 informational signage leading to nearest restroom for wheelchair access.
24 Plaintiff utilized a wheelchair due to the Plaintiff's disability in an attempt to
25 patronize Defendant's premises and encountered noncompliant directional
26 and informational signage leading to the nearest restroom for wheelchair
27 access that non-handicapped patrons could access without barrier. Said
barrier is covered by the A.D.A. guidelines and is in nonconformity with the
requirements for such architecture.

TACO DEL SOL

t) Failure to provide ADA compliant secured floor mats throughout the
subject facility, in violation of 2010 ADAS and 2015 ABAAS Section
302.2. Plaintiff encountered non-complaint secured floor mats by which he
had difficulty negotiating from his wheelchair which was a barrier that non-
handicapped patrons did not have. Said barrier is covered by the A.D.A.

1 guidelines and is in nonconformity with the requirements for such
2 architecture.

3 u) Failure to provide ADA compliant self-serve counter dispenser height, in
4 violation of 2010 ADAS and 2015 ABAAS Section 904.4.1 and 904.4.2.
5 This barrier failed to have compliant self-serve counter dispenser height
6 accessible by wheelchair that non-handicapped patrons could access without
7 barrier. Said barrier is covered by the A.D.A. guidelines and is in
8 nonconformity with the requirements for such architecture.

9 v) Failure to provide ADA compliant self-serve dispensers height, in
10 violation of 2010 ADAS and 2015 ABAAS Section 308.1. This barrier
11 failed to have compliant self-serve dispensers height accessible by
12 wheelchair that non-handicapped patrons could access without barrier. Said
13 barrier is covered by the A.D.A. guidelines and is in nonconformity with the
14 requirements for such architecture.

15 w) Failure to provide ADA compliant number of accessible table seating, in
16 violation of 2010 ADAS and 2015 ABAAS Section 226.1. This barrier
17 failed to have a compliant number of wheelchair accessible table seating.
18 Plaintiff utilized a wheelchair due to the Plaintiff's disability in an attempt to
19 enter Defendant's premises and encountered inadequate number of
20 accessible table seating with wheelchair access that non-handicapped
21 patrons could access without barrier. Said barrier is covered by the A.D.A.
22 guidelines and is in nonconformity with the requirements for such
23 architecture.

24 x) Failure to provide ADA compliant table seating clearances, in violation of
25 2010 ADAS and 2015 ABAAS Section 306.1 and 306.3.1. This barrier
26 failed to have a compliant table seating clearances for wheelchair accessible
27 table seating. Plaintiff utilized a wheelchair due to the Plaintiff's disability in
an attempt to patronize Defendant's premises and encountered inadequate
table seating clearances for wheelchair access that non-handicapped patrons
could access without barrier. Said barrier is covered by the A.D.A.
guidelines and is in nonconformity with the requirements for such
architecture.

y) Failure to provide ADA compliant table height, in violation of 2010
ADAS and 2015 ABAAS Section 902.2. This barrier failed to have a
compliant table height for wheelchair accessible table seating. Plaintiff

1 utilized a wheelchair due to the Plaintiff's disability in an attempt to
2 patronize Defendant's premises and encountered inadequate table height for
3 wheelchair access that non-handicapped patrons could access without
4 barrier. Said barrier is covered by the A.D.A. guidelines and is in
nonconformity with the requirements for such architecture.

5 z) Failure to provide ADA compliant transaction counter height, in violation
6 of 2010 ADAS and 2015 ABAAS Section 904.4.1 and 904.4.2. This barrier
7 failed to have compliant transaction counter height with wheelchair access.
8 Plaintiff utilized a wheelchair due to the Plaintiff's disability in an attempt to
9 enter Defendant's premises and encountered noncompliant transaction
10 counter height with wheelchair access that non-handicapped patrons could
access without barrier. Said barrier is covered by the A.D.A. guidelines and
is in nonconformity with the requirements for such architecture.

11 aa) Failure to provide ADA compliant directional and informational signage
12 leading to the nearest restroom, in violation of 2010 ADAS and 2015
13 ABAAS Section 216.6. This barrier failed to have compliant directional and
14 informational signage leading to nearest restroom for wheelchair access.
15 Plaintiff utilized a wheelchair due to the Plaintiff's disability in an attempt to
16 patronize Defendant's premises and encountered noncompliant directional
17 and informational signage leading to the nearest restroom for wheelchair
access that non-handicapped patrons could access without barrier. Said
barrier is covered by the A.D.A. guidelines and is in nonconformity with the
requirements for such architecture.

18 bb) Failure to provide ADA compliant number of accessible exterior table
19 seating, in violation of 2010 ADAS and 2015 ABAAS Section 226.1. This
20 barrier failed to have a compliant number of wheelchair accessible table
21 seating. Plaintiff utilized a wheelchair due to the Plaintiff's disability in an
22 attempt to enter Defendant's premises and encountered inadequate number
23 of accessible table seating with wheelchair access that non-handicapped
24 patrons could access without barrier. Said barrier is covered by the A.D.A.
guidelines and is in nonconformity with the requirements for such
architecture.

25 cc) Failure to provide ADA compliant exterior table seating clearances, in
26 violation of 2010 ADAS and 2015 ABAAS Section 306.1 and 306.3.1. This
27 barrier failed to have a compliant table seating clearances for wheelchair
accessible table seating. Plaintiff utilized a wheelchair due to the Plaintiff's
disability in an attempt to patronize Defendant's premises and encountered

1 inadequate table seating clearances for wheelchair access that non-
2 handicapped patrons could access without barrier. Said barrier is covered by
3 the A.D.A. guidelines and is in nonconformity with the requirements for
4 such architecture.

5 dd) Failure to provide ADA compliant exterior table height, in violation of
6 2010 ADAS and 2015 ABAAS Section 902.2. This barrier failed to have a
7 compliant table height for wheelchair accessible table seating. Plaintiff
8 utilized a wheelchair due to the Plaintiff's disability in an attempt to
9 patronize Defendant's premises and encountered inadequate table height for
10 wheelchair access that non-handicapped patrons could access without
11 barrier. Said barrier is covered by the A.D.A. guidelines and is in
12 nonconformity with the requirements for such architecture.

RESTROOM

13 ee) Failure to provide ADA compliant mirror height, in violation of 2010
14 ADAS and 2015 ABAAS Section 603.3. This barrier failed to have
15 compliant mirror height accessible by wheelchair. Plaintiff utilized a
16 wheelchair due to the Plaintiff's disability in an attempt to enter Defendant's
17 premises and encountered noncompliant mirror height for wheelchair access
18 that non-handicapped patrons could access without barrier. Said barrier is
19 covered by the A.D.A. guidelines and is in nonconformity with the
20 requirements for such architecture.

21 ff) Failure to provide ADA compliant paper towel dispenser reach range, in
22 violation of 2010 ADAS and 2015 ABAAS Section 308.2.1. This barrier
23 failed to have compliant paper towel dispenser reach range accessible by
24 wheelchair. Plaintiff utilized a wheelchair due to the Plaintiff's disability in
25 an attempt to enter Defendant's premises and encountered noncompliant
26 paper towel dispenser reach range for wheelchair access that non-
27 handicapped patrons could access without barrier. Said barrier is covered by
the A.D.A. guidelines and is in nonconformity with the requirements for
such architecture.

gg) Failure to provide ADA compliant unobstructed lavatory clear floor
space in violation of 2010 ADAS and 2015 ABAAS Section 606.5. This
barrier failed to have compliant unobstructed lavatory clear floor space by
wheelchair. Plaintiff utilized a wheelchair due to the Plaintiff's disability in
an attempt to enter Defendant's premises and encountered noncompliant

1 obstructed lavatory clear floor space by wheelchair access that non-
2 handicapped patrons could access without barrier. Said barrier is covered by
3 the A.D.A. guidelines and is in nonconformity with the requirements for
4 such architecture.

5 19. The above-referenced barriers will likely cause a repeated real injury in
6 fact in a similar way as listed if not remedied when the Plaintiff frequents this
7 property again as described previously. Each of these barriers interfered with the
8 Plaintiff's full and equal enjoyment of the facility by failing to allow Plaintiff the
9 same access due to the Plaintiff's disability as those enjoy without disabilities.
10

11 20. Upon information and belief, there are other current violations of the
12 ADA at Defendants' Properties, and only once a full inspection is done can all said
13 violations be identified due to Plaintiff being deterred from discovering each and
14 every barrier as a result of encountering the above-listed violations.
15

16 21. To date, the readily achievable barriers and other violations of the
17 ADA still exist and have not been remedied or altered in such a way as to
18 effectuate compliance with the provisions of the ADA. The barriers to access at
19 the Subject Facilities, as described above, have severely diminished Plaintiff's
20 ability to avail himself of the goods and services offered at the Subject Facilities,
21 and compromise his safety.
22
23
24

25 22. Pursuant to the ADA, 42 U.S.C. §12101 et. seq., and 28 C.F.R.
26 §36.304, the Defendants were required to make the Subject Facility, a place of
27

1 public accommodation, accessible to persons with disabilities since January 28,
2 1992. To date, the Defendants have failed to comply with this mandate.

3
4 23. The Plaintiff has been obligated to retain the undersigned counsel for
5 the filing and prosecution of this action. The Plaintiff is entitled to have his
6 reasonable attorney's fees, costs and expenses paid by the Defendants, pursuant to
7
8 42 U.S.C. §12205.

9 24. Pursuant to 42 U.S.C. §12188, this Court is vested with the authority
10 to grant the Plaintiff's injunctive relief; including an order to alter the subject
11 facilities to make them readily accessible to, and useable by, individuals with
12 disabilities to the extent required by the ADA and closing the subject facility until
13 the requisite modifications are completed.
14
15

16 25. The Plaintiff has standing for injunctive relief as to any other barriers
17 at the Subject Facility related to his disability even if Plaintiff is not deterred from
18 returning to the public accommodation at issue pursuant to *Chapman v. Pier 1*
19 *Imports (U.S.) Inc.*, 631 F.3d 939 (9th Cir. 2011).
20

21 WHEREFORE, the Plaintiff hereby demands judgment against the
22 Defendants and the Court declare that the subject property and Subject Facilities
23 owned, operated, leased, controlled and/or administered by the Defendants are
24 violative of the ADA;
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- 1 A. The Court enter an Order requiring the Defendants to alter their
2 facilities and amenities to make them accessible to and usable by
3 individuals with disabilities to the full extent required by Title III of
4 the ADA;
5
6 B. The Court enter an Order directing the Defendants to evaluate and
7 neutralize their policies, practices and procedures toward persons with
8 disabilities, for such reasonable time so as to allow the Defendants to
9 undertake and complete corrective procedures to the Subject Facility;
10
11 C. The Court award reasonable attorney's fees, all costs (including, but
12 not limited to court costs and expert fees) and other expenses of suit,
13 to the Plaintiff; and
14
15 D. The Court award such other and further relief as it deems necessary,
16 just and proper.
17
18

19
20 Dated: This 11th day of December, 2019.
21

22
23 By: /s/ M. William Judnich
24 M. William Judnich
25 Attorney for Plaintiff
26
27